

REMARKS

Claim 22 has been amended to delete the objected to phrase, namely "the top opening of the container is accurately positioned so that said lid selectively matingly engages and closes the top opening of the container". Claim 22 now specifies that the upper shelf has a front rim, in addition to side walls and a back wall, for positioning the base of the container on the upper shelf whereby the lid selectively matingly engages and closes the top opening of the container mounted on the upper support shelf when the lid is in a closed position with the top opening of the container. This wording finds complete support in the specification, namely page 2, the third paragraph which reads:

"A further feature of the invention is to provide a lid pivotally mounted on an upper portion of the frame which is complimentary to the size and shape of the uppermost recycle box for covering the open top of the box to prevent animals and rain from entering the box..."

Furthermore, page 3, second paragraph reads:

"A further aspect of the invention is to size the dolly shelves to match the particular shape and configuration of the recycle boxes, and in which the shelves are formed with side walls and a slight front edge to retain and stabilize the boxes stored thereon and which will allow the boxes to be pulled forward from the shelves for adding materials to the boxes or emptying the contents therefrom."

The last sentence of page 7 reads:

"A latch 32 is mounted on the front lid 30 which can be configured to clip over box rim 25 of the uppermost box as shown in Figs. 3, 4, and 6 to prevent rain from entering the box as well as preventing the box from being scavaged by animals."

Also, the first paragraph on page 8 reads:

"The upper shelf 10 is positioned so as to be slightly above the location of rim 25 of lower box 23 whereby upper box 23, shelf 10, and lid 30 provide weather and animal protection to lower box 23 by covering open top 26 thereof. Again, upper shelf 10 is positioned along frame members 3 to provide this desired spacing between the boxes and locating the upper end of the box with respect to lid 30."

This relationship between the top shelf and container is also clearly shown in the drawings, and in particular Figures 3, 4 and 6. Thus, it is respectfully submitted that the previous rejection of failing to provide proper antecedent basis for the claimed subject matter is now eliminated.

The enclosed Declaration under 37 CFR 1.131 provides evidence that the subject invention was conceived prior to the effective date of the Salmon et al. US Patent No. 6,550,792, which is June 15, 2001, the filing date of the application resulting in US Patent No. 6,550,792.

The enclosed Declaration of Paul R. Jarko shows that the basic invention set forth in claim 22 as now amended, was clearly conceived prior to the critical date of the Salmon patent (June 15, 2001), and clearly shown in Exhibit C, and was diligently reduced to constructive reduction to practice by the filing of the present application on February 1, 2002. Furthermore, it is respectfully submitted that the elimination of Salmon as a reference clearly results in claim 22 as now amended, as being patentable over the remaining cited references.

The present invention does not claim the same subject matter as that of the Salmon U.S. Patent 6,550,792 since claim 1 of Salmon requires that the recycling container has an outer wall 50 which is attached to and extends upwardly from the base and along a second side edge of the base and abuts the back wall and that it is spaced from the shelf assembly. Claim 1 also requires a pair of side walls attached to the upper surface of the platform which are oriented

generally parallel to each other, and that the cover extends downwardly to an uppermost one of the panels. This is not present in the load dolly of the present invention. Independent claim 3 and 7 also require similar limitations which are not present in the subject load dolly. Thus, the present application is not claiming the same subject matter as that of Salmon.

The cited reference EP 0 955 224 (Rauschenberger) shows a dolly cart which does not even have a lid mounted thereon and was cited to merely show a cart wherein the shelves had a front rim and a plurality of holes and that the shelves could accommodate a container. It is submitted that nothing in Rauschenberger would suggest putting a lid on the top of the frame for subsequent engagement and covering of the uppermost container which is positioned thereon, since the Salmon reference has now been eliminated.

Roman (US 5,707,030) was not used in rejecting claim 22, nor was Toggweiler (CH 310,381), Shyshka (CA 2,271,906) and Barnes (US 5,230,282). Thus, it is respectfully submitted that with the elimination of Salmon as a reference in view of the Declaration under 37 CFR 1.131, claim 22 is entitled to allowance.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal notice of allowability for the claims. Please call the undersigned attorney if any questions remain after this amendment.